

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

SEP 16 1996
DEPT. OF INSURANCE
BY CWB

In the Matter of

) Docket No. 96A-149

CONTINENTAL INSURANCE COMPANY

) CONSENT ORDER

BOSTON OLD COLONY INSURANCE COMPANY

COMMERCIAL INSURANCE COMPANY OF NEWARK

FIDELITY & CASUALTY COMPANY OF NEW YORK

FIREMEN'S INSURANCE COMPANY OF NEWARK

GLENS FALLS INSURANCE COMPANY

KANSAS CITY FIRE & MARINE INSURANCE CO.

MAYFLOWER INSURANCE COMPANY, LTD.

NIAGARA FIRE INSURANCE COMPANY

Respondents.

A Market Conduct Examination of Respondents, The Continental Insurance Company #35289 ("CI"), The Boston Old Colony Insurance Company #20761 ("BOC"), Commercial Insurance Company of Newark, New Jersey #20818 ("COM"), Fidelity and Casualty Company of New York #35270 ("FC"), Firemen's Insurance Company of Newark, New Jersey #20850 ("FI"), Glens Falls Insurance Company #34622 ("GF"), Kansas City Fire and Marine Insurance Company #20885 ("KCF"), Mayflower Insurance Company, Ltd. #22152 ("MIC") and Niagara Fire Insurance Company #35106 ("NE") was conducted by Market Conduct Examiners ("Examiners") for the Arizona Department of Insurance ("the Department"). Based on the Report of Market Conduct Examination prepared by the Examiners, it is alleged that Respondents have violated provisions of the Arizona Revised Statutes, Title 20, including Sections 20-297, 20-359, 20-383, 20-385, 20-400.01, 20-448, 20-451, 20-461, 20-462, 20-1631, 20-1632, 20-1652, 20-1676, 20-1674, 20-1677, 23-906, 23-961, Arizona Administrative Code ("A.A.C.") R20-6-801, Respondents' 1989 Consent Order and Bacchus v. Farmers Ins. Group (1970) 106 Ariz. 280, 475 P.2d 264.

1 Respondents wish to resolve this matter without formal
2 adjudicative proceedings and hereby agree to a Consent Order.

3 CNA Financial Corporation Acquisition of the
4 Continental Corporation

5 CNA did not own or control Continental (Respondents)
6 during the review period that is the subject of this market
7 conduct examination. On May 10, 1995, the CNA Financial
8 Corporation ("CNA") acquired control of the Continental
9 Corporation ("Continental") and its subsidiaries through the
10 purchase of Continental's outstanding common stock for 1.1
11 billion. Continental, the ultimate holding company of the
12 Insurer, beneficially owns all of the capital stock of the
13 Insurer. However, CNA was completely unaffiliated with
14 Continental during the period when the alleged violations that
15 are subject of this Consent Order allegedly occurred.

16 The Director of Insurance of the State of Arizona
17 ("the Director") enters the following Findings of Fact and
18 Conclusions of Law, which are neither admitted nor denied by
19 Respondents, and the following Order.

20 FINDINGS OF FACT

21 1. Respondents are authorized to transact property and
22 casualty insurance including Workers Compensation ("WC")
23 pursuant to Certificates of Authority issued by the Director.

24 2. The Examiners were authorized by the ADOI to conduct a
25 market conduct examination of Respondents. The on-site
26 examination was concluded as of August 31, 1993 and a Report of
27 Examination ("Report") was written. The Examiners reviewed first
28 party automobile total loss claim files with loss dates between

1 March 24, 1985 and November 13, 1992; Uninsured Motorist claim
2 files with loss dates from June 1, 1987 through January 26,
3 1991; Workers' Compensation ("WC") for the years 1990, 1991
4 through October 6, 1992; Commercial Monoline Policies ("CLP")
5 for the years 1990, 1991 through October 24, 1992; Electronic
6 Data and Word Processing ("EDP") policies for the years 1990,
7 1991 through October 1, 1992; Commercial Multi-Peril ("CMP") for
8 the years 1990, 1991, 1992 through May 22, 1993 and Personal
9 Lines ("PL") for the years 1990, 1991, 1992 through March 10,
10 1993 .

11 3. The on-site portion of a prior rate examination of
12 Respondents ("1989 examination") was completed as of January 20,
13 1989, by Examiners for the Department. A related Amended
14 Consent Order was filed by the Director on September 25, 1989.
15 Respondents were ordered, inter alia, to:

16 "{C}ease and desist from failing to adhere to
17 all provisions of the WC Plan in those companies in
18 which it has adopted the Plan, from failing to
19 document its files with the facts supporting
20 adjustments to the full manual premium developed for
21 risks, from failing to file all rates and rate
22 related rules permitting it to use (A) rates or to
23 multiply the factors developed from the schedule from
24 a schedule rating and experience rating plan, and
25 from failing to ensure that all insureds or subjects
26 of insurance having substantially like insuring, risk
27 and exposure factors, or expense elements are
28 similarly rated and are not unfairly discriminated
against in the amount of premium charged them."

24 4. Respondents failed to file their lists of agents with
25 the Department for the years 1990, 1991, 1992 and 1993.

26 5. The National Council of Compensation Insurance ("the
27 NCCI"), a duly licensed rating organization in Arizona, makes
28 rate filings on behalf of its members with the ADOI. Workers'

1 Compensation ("WC") insurers are required by statute to belong
2 to a WC rating organization and to adhere to its rates unless
3 the insurer has filed deviations from these rates. Respondents
4 are members of the NCCI. Any reference to the filings of these
5 Companies, or their "filed rates and rules" means rates and
6 rules filed with the Department by these Companies or by the
7 NCCI on their behalf. FI has adopted a fifteen percent (15%)
8 deviation and NF has adopted a fifteen percent (15%) deviation
9 from rates filed by the NCCI.

10 6. The NCCI's Schedule Rating Plan ("Plan") was approved
11 for use in Arizona July 8, 1982 by the Director. Effective
12 October 1, 1988, the Plan was amended to require insurers to
13 include within each WC file a completed schedule rating ("SR")
14 worksheet and loss prevention survey. CI and KCF adopted the
15 Plan on July 1, 1982.

16 7. Respondents issued WC policies, but failed to follow
17 their filed plan and/or rates as follows:

18 a. issued two WC policies, but failed to insert the
19 NCCI carrier code number on the policy information sheet.

20 b. issued one WC policy without including the NCCI
21 risk identification number on the policy Information Page.

22 c. issued five WC policies, but failed document
23 consideration of the insureds for schedule rating ("SR"). These
24 insureds were either experienced rated or met the premium size
25 for experience rating ("ER") and thus were eligible for SR.

26 d. issued three WC policies, but failed to include
27 documentation of SR in the files to comply with Section 6 of the
28 Plan.

1 e. issued four WC policies, but failed to include a
2 loss control report in the file within ninety (90) days of
3 policy inception, as required by number 7 of the Plan.

4 f. issued three WC policies, but failed to apply the
5 final NCCI experience modification.

6 g. issued two WC policies, without including the final
7 NCCI E-mod worksheet in the policy file as documentation that
8 the experience modification Respondents applied was the final
9 NCCI experience modification and not the preliminary
10 modification or one that the Respondents' calculated.

11 h. billed final audits on three WC policies, but
12 applied an incorrect or unfiled rate or incorrect minimum
13 premium for increased limits for Coverage B.

14 i. issued four WC policies but failed to include
15 signed rejection forms in the policy files for the individuals
16 who were excluded from coverage.

17 j. issued one WC Policy, but NE applied a 15% schedule
18 credit when NI had not filed nor been approved to apply either
19 SR or a deviation from the manual rates.

20 8. Respondents cancelled or nonrenewed three WC policies,
21 but failed to send the required 30 day notice of
22 cancellation/nonrenewal to the insured.

23 9. Respondents cancelled or nonrenewed six WC policies,
24 but failed to notify the Industrial Commission of Arizona, as
25 required by A.R.S. § 23-961(F).

26 10. Respondents are members of the Insurance Services
27 Office ("ISO"), a property and casualty ("P&C") rating
28 organization duly licensed by the Department to file rates on

1 behalf of its members. ISO files rates and rules on behalf of
2 Respondents. Respondents have filed with the Department various
3 deviations from the ISO filings as well as having filed
4 independent filings of their own.

5 11. Respondents issued CLP policies in violation of their
6 filings as follows:

7 a. waived premium on a portion of one policy in
8 violation of their filed rule.

9 b. issued four policies using an Expense Rating Plan
10 with unfiled modifiers that resulted in overcharges totaling
11 \$759.00.

12 c. issued four policies, but failed to include any
13 documentation in support of the schedule credits/debits applied.

14 d. issued eight policies, but failed to include
15 adequate documentation to support the schedule credits and
16 debits.

17 12. Respondents failed to file their commercial property
18 ("CProp") IRPM worksheet with the Department. Further the
19 worksheet used does not comply with Part II of IRPM Plan filed
20 by the Respondents with the Department.

21 13. Respondents failed to send 22 CProp insureds the 60
22 days notice of premium increase required by A.R.S. § 20-1677(A).

23 14. Respondents issued CProp policies in violation of
24 their filings as follows:

25 a. issued five policies, but failed to provide any
26 documentation to support the IRPM credits or debits.

27 b. issued 12 policies, but failed to provide adequate
28 documentation to support the IRPM debits or credits.

1 c. issued four policy files applying a prior year's
2 ISO specific property rate or failed to obtain the current
3 year's specific property rates from ISO.

4 d. issued six policies applying protection classes not
5 consistent with their filings.

6 e. issued two policies applying territory multipliers
7 not consistent with their filings.

8 f. issued two policies applying prior rates instead of
9 the current policy year rates.

10 g. issued one policy applying an unfiled package
11 modifier.

12 15. Respondents issued two commercial general liability
13 ("CGL") policies, but failed to send to the insureds the
14 required 60 day notice of premium increase.

15 16. Respondents issued two CGL policies, but applied the
16 Commercial Liability Schedule Rating Plan with inadequate
17 documentation in the file to support the debits applied under
18 the Plan.

19 17. Respondents failed to apply the correct rating
20 procedure for EDP policies as follows:

21 a. issued thirty-eight out of 50 policy terms applying
22 incorrect/inconsistent AOP load factors other than .03 new and
23 .05 renewal business.

24 b. issued seven policy terms with premiums under
25 \$150.00 which is inconsistent with the \$150.00 minimum premium
26 rule.

27 c. issued 23 policy terms applying incorrect rates.

28 d. issued 10 policy terms using incorrect CSP codes.

1 e. issued 17 policy terms using incorrect or no
2 protection classes.

3 f. issued 14 policy terms but failed to use the
4 applicable territorial multiplier.

5 g. issued 20 policy terms which did not contain the
6 vandalism code.

7 h. issued five policy terms but failed to apply the
8 coinsurance factor.

9 i. issued 29 policy terms which contained deductible
10 errors.

11 j. issued four policy terms but applied incorrect
12 increased limits factors.

13 k. issued five policy terms which contained
14 mathematical errors

15 18. Respondents reduced the premiums either by the
16 company's election, or due to the agent's request on three EDP
17 policies.

18 19. Respondents failed on 10 EDP policies to send the
19 insureds the notice of premium increase or policy change at
20 least sixty (60) days prior to policy expiration.

21 20. Respondents failed to send the required 60 day advance
22 notice of premium increase or policy change, prior to policy
23 expiration for 11 Comprehensive Business Policies ("CBP").

24 21. Respondents issued CBP policies in violation of their
25 filings as follows:

26 a. issued 17 policies in which the file failed to
27 contain any documentation to support the debits/credits applied
28 under Respondents' IRPM and or schedule rating ("SR") plans.

1 b. issued 15 policies in which the policy files failed
2 to contain adequate documentation to support the debits/credits
3 applied in their IRPM and/or SR plans.

4 c. issued two policies for the same insured in which
5 the Respondents applied both a 25% IRPM credit and a 25% SR
6 credit for the same policy term.

7 d. applied a 15% SR credit to the automobile liability
8 premium when the policy failed to meet the premium eligibility
9 requirements.

10 e. issued 27 policies in which the risks were eligible
11 for IRPM or SR, but failed to document that the risks were
12 considered for the same.

13 f. issued two policies for the same insured in which
14 the file failed to contain documentation to support the auto
15 physical damage ER applied to the the manual premium.

16 g. issued three policies eligible for ER, but the
17 policy files did not document the Respondents' consideration of
18 ER.

19 h. issued eight policies using incorrect or unfiled
20 class codes.

21 i. issued 14 policies applying incorrect protection
22 class and/or territory codes.

23 j. issued 43 policies, applying incorrect rates in
24 establishing premiums for CProp, inland marine, EDP, general
25 liability ("GL") and/or commercial automobile ("CA") coverage
26 parts.

27

28

1 k. issued seven policies, but applied either incorrect
2 ISO specific rates, failed to obtain or apply the current rates,
3 and/or applied unfiled specific rates.

4 l. issued 12 policies, but applied either incorrect
5 and/or unsupported "tentative" or "judgment" specific rates for
6 some insureds which developed premiums inconsistent with their
7 filings.

8 m. issued four blanket rated property coverage
9 policies in which the Respondents failed to apply the correct
10 multiple location premium and dispersement credit ("MLPDC").

11 n. issued 10 policies applying incorrect "A" rates.

12 o. issued 11 policies applying unfiled "A" rates.

13 p. issued 18 policies applying incorrect increased
14 limits factors ("ILF").

15 q. issued six policies failing to provide
16 documentation to support the debits/credits applied as expense
17 rating factors.

18 r. issued one policy applying a 40% deviation for GF
19 when GF filed for only a 15% deviation.

20 s. issued 10 umbrella policies using unfiled rates and
21 pricing criteria.

22 t. issued one policy applying an unfiled 5% commission
23 reduction factor in determining the umbrella premium.

24 u. issued three policies, but failed to apply ER to
25 policies eligible for ER.

26 v. issued two policies in GF when the premiums did not
27 meet the standards for use of the Preferred Rating Plan.

28

1 w. renewed one policy but failed to apply the approved
2 15% deviation.

3 x. issued four policies applying an IRPM rating factor
4 instead of a Commercial General Liability Schedule Rating
5 ("CGLSR") factor to the GL coverage.

6 y. issued five policies omitting various rating
7 factors in the application of the EDP formula.

8 z. issued 13 policies but either failed to include
9 intracompany sales, applied incorrect package modifiers, or
10 applied incorrect deviations to calculate the policy premiums.

11 22. Respondents failed to send the 60 day notice of
12 nonrenewal for two CBP policies. Furthermore, evidence in the
13 file failed to show that the notices were sent by certified mail.

14 23. Respondents issued Business Owners Xtra policies
15 ("BOX") but failed to file an IRPM worksheet as required by Part
16 II of the IRPM plan.

17 24. Respondents failed to provide any documentation or
18 inadequate documentation to support the debit/credit applied
19 under the IRPM Plan in 35 BOX files.

20 25. Respondents failed to send the required 60 day advance
21 notice of premium increase or policy change to 31 BOX insureds

22 26. Respondents issued BOX policies in violation of their
23 filings as follows:

24 a. issued one policy but failed to apply their excess
25 discount factor and deductible factor.

26 b. failed to apply IRPM to 31 policies which met the
27 premium size requirement for IRPM rating.

28

1 c. issued 47 policies applying an unfiled "BOX
2 Automatic Inflation Adjustment-1991".

3 d. issued three policies but charged a premium which
4 was different than the premium developed under the mathematical
5 formula.

6 e. issued 10 policies applying incorrect rates or
7 rating factors.

8 f. issued eight policies but failed to apply its filed
9 premium tax component.

10 g. issued three policies but failed to apply the filed
11 IRPM rating factor to all eligible coverages.

12 h. issued three policies but failed to charge the
13 filed flat charge for swimming pools.

14 i. issued six policies applying an additional IRPM
15 credit for BOX Custom when the policies were already issued
16 under its BOX Custom policy contract.

17 j. issued 29 policy files but applied an unfiled
18 Inflation Guard Adjustment factor.

19 k. issued two policies but applied an additional 2%
20 credit for sprinklered buildings under the IRPM plan when this
21 is not part of the risk characteristics under the plan.

22 l. issued nine policies but applied either incorrect
23 construction classes or incorrect occupancy classifications.

24 m. issued eight policies but applied protection
25 classes which were inconsistent with their filings.

26 n. issued one policy but failed to apply the filed
27 Inflation Guard Adjustment factor.

28

1 o. combined two policies into one policy and reduced
2 the IRPM credit from 25% to 10% without any documentation in the
3 files to support the decrease.

4 27. Respondents failed to send the notices of cancellation
5 or nonrenewal by certified mail on 594 policies.

6 28. Respondents failed on 38 Ranchers/Farmers Deluxe
7 Policies ("RFD") to deliver written notice of premium increase
8 or policy change to insureds at least 60 days in advance of
9 policy expiration.

10 29. Respondents issued 39 RFD policies but failed to
11 document or adequately document the IRPM debits or credits in
12 rating the policies. Also the Respondents issued 17 policies but
13 failed to document that the policies had been considered for SR
14 or an IRPM credit or debit.

15 30. Respondents issued RFD policies in violation of their
16 filings as follows:

17 a. issued three policies but applied unfiled rates in
18 determining the premium for Farm Personal Property and Packing
19 Shed Equipment.

20 b. issued one policy applying an incorrect class code.

21 c. issued 13 policies applying either incorrect rates
22 or applied unfiled rates to Manually Rated Liability Coverages.

23 d. issued 45 policies applying incorrect rates.

24 e. issued 15 policies but incorrectly rated the
25 Division II Automobile coverage by applying an incorrect factor.

26 f. issued six policies that were eligible for ER but
27 failed to apply ER to the Division II Automobile coverage.

28

1 g. issued four policies but failed to comply with
2 their filings by either rating the policies with a credit for
3 expenses resulting from commissions contributed by agents with
4 an equal amount matched by the Company or including the expense
5 modification in the rating formula in the IRPM field.

6 h. issued three policies but incorrectly rated the
7 umbrella coverage.

8 i. issued eight policies applying incorrect factors
9 for the Brick Construction Credit.

10 j. issued seven policies but incorrectly rated the
11 Manually Rated Optional Coverages.

12 k. issued nine policies but applied an incorrect
13 protection class.

14 l. issued two policies but applied an experience
15 modifier when the risk was not eligible.

16 m. issued one policy but combined the expense
17 adjustment and IRPM adjustment of premium using an additive
18 approach rather than a multiplicative approach.

19 31. Respondents mailed the notice of cancellation for
20 nonpayment of premium to one RFD insured's prior address rather
21 than the insured's most current address.

22 32. Respondents failed to file with the Department the
23 list of retirement communities eligible for Link Plus Program
24 ("PCP"), the program guidelines or the Link Plus (Automobile
25 Section) Underwriting Guide.

26 33. Respondents issued PCP policies in violation of their
27 filings as follows:

28 a. issued 20 policies using an incorrect territory.

1 b. issued one policy using an incorrect symbol for
2 automobile coverage.

3 c. issued 34 policies using incorrect protection
4 classes.

5 d. issued seven policies using an incorrect premium
6 category.

7 e. issued 41 policies rating the automobile
8 comprehensive coverage premium incorrectly.

9 f. issued 18 policies but applied incorrect rates for
10 the Coverage Enhancement or Platinum Amendment Endorsement.

11 g. issued 17 policies applying prior rates to the
12 policies.

13 h. issued 22 policies but applied the rating plan
14 incorrectly or inconsistently which resulted in the insureds
15 paying premiums which were different than the premiums of
16 insureds having substantially like insuring, risk and exposures
17 factors, or expense elements.

18 i. issued five policies but incorrectly calculated the
19 premium for watercraft.

20 j. issued nine policies but incorrectly determined the
21 insured's credit for existing insurance.

22 k. issued one policy but incorrectly rated the
23 non-owned automobile coverage.

24 l. issued seven policies but rated the automobile
25 liability coverage premium incorrectly.

26 m. issued two policies but applied the Optional
27 Deductible credit.

28

1 n. issued one policy to an insured who was not
2 eligible for the LINK PLUS program.

3 o. issued six policies but incorrectly rated the
4 liability and medical coverage on the Secondary Premises.

5 p. issued one policy and its renewal using an
6 incorrect protection class.

7 q. issued eight policies but incorrectly determined
8 the premium for property coverage.

9 r. issued 12 policies including a premium charge for
10 golf carts using unfiled rates.

11 s. issued two policies but rated the premium for golf
12 cart coverage using incorrect rates.

13 t. issued eight policies but failed to give the
14 insureds credit for passive restraint devices.

15 u. issued five policies but incorrectly rated the
16 uninsured motorist ("UM") coverage.

17 v. issued eleven policies but rated the Manually Rated
18 Optional coverages incorrectly.

19 w. issued two policies but miscalculated the personal
20 umbrella premium.

21 x. issued four policies but incorrectly calculated the
22 automobile collision coverage premium.

23 y. issued one policy but misapplied the new home
24 credit.

25 34. Respondents issued one policy for three terms in a
26 company which was not authorized to transact insurance in the
27 State of Arizona.

28

1 35. Respondents cancelled or nonrenewed six automobile
2 insureds, but used a notice which did not contain notice of the
3 insureds' right to complain to the Director.

4 36. Respondents cancelled one automobile policy midterm,
5 which had been in effect over 60 days but did not cancel the
6 policy for a reason allowed by statute.

7 37. Respondents cancelled two personal automobile policies
8 but failed to inform the insureds of their possible eligibility
9 for the assigned risk plan.

10 38. Respondents cancelled one policy as the company was
11 unable to obtain an application for Protective Devices, an
12 invalid reason for midterm cancellation.

13 39. Respondents cancelled four PCP combination premises
14 and automobile exposure for reasons listed under the premises
15 coverage, which is not a valid reason to cancel the automobile
16 coverage.

17 40. Respondents failed to include all applicable sales
18 taxes and fees on settlement of 257 first party total loss
19 automobile settlements. A total of \$10,913.87 is due these
20 insureds and has been paid.

21 41. Respondents in 83 claim files showed either
22 undocumented, incorrect and/or documented deductions which were
23 not measurable, discernible, itemized and specific as to dollar
24 amount or were not appropriate in amount. A total of \$9,158.38
25 is due these insureds and has been paid.

26 42. Respondents failed to pay interest to 234 insureds
27 whose claims were paid after July 15, 1986.

28

1 43. Respondents in 18 first party total loss claims
2 elected to use book value in arriving at the actual cash value
3 ("ACV"). No attempts were made to obtain either the cost of a
4 comparable automobile available in the local market area, or two
5 dealer quotes within the local market area.

6 44. Respondents on four first party total loss claims
7 failed to obtain either two dealer quotes or the dealer quotes
8 were not within the local market area.

9 45. Respondents on four first party total loss claims
10 failed to complete the investigation of the claim within thirty
11 (30) days after notification of the claim.

12 46. The Examiners reviewed 29 uninsured motorist ("UM")
13 claim settlements which revealed the following:

14 a. Respondents failed to include the sum of \$1,505.51
15 under the medical payments coverage of one policy. This amount
16 has been paid.

17 b. Respondents failed to include the sum of \$1,455.16
18 in the UM settlement of one policy. This amount has been paid.

19 CONCLUSIONS OF LAW

20 1. By failing to file their list of agents with the ADOI
21 prior to January 30, 1990-1993, Respondents violated A.R.S. §
22 20-297.

23 2. By issuing WC policies which were not in accordance
24 with WC filings, including the Plan and deviations , filed by
25 Respondents and by the NCCI on their behalf, Respondents
26 violated A.R.S. §§ 20-357(E) and 20-359(A) and the 1989 Consent
27 Order.
28

1 3. By failing to include in the policy files the
2 employees' signed notice of rejection of WC coverage,
3 Respondents violated A.R.S. § 23-906(C)

4 4. By nonrenewing and cancelling WC policies, but failing
5 to send any notice of nonrenewal, cancellations, reinstatements
6 or issuance to the the Industrial Commission of Arizona ("ICA")
7 and the insureds, Respondents violated A.R.S. § 23-961(F).

8 5. By calculating the premiums of certain WC insureds
9 differently than those of other insureds having substantially
10 like insuring, risk and exposure factors, or expense elements,
11 Respondents unfairly discriminated between insureds in violation
12 of A.R.S. §§ 20-356(1) and 20-448(C), and the 1989 Consent Order.

13 6. Respondents violated A.R.S. § 20-400.01(A) by
14 developing premiums for risks in a manner not consistent with
15 filings made by Respondents pursuant to A.R.S. § 20-385(A) and
16 the 1989 Consent Order.

17 7. By misclassifying risks and determining their rates on
18 the basis of the misclassifications, Respondents violated A.R.S.
19 § 20-400.01(B) and (C). By developing premiums based upon these
20 misclassifications, Respondents violated A.R.S. § 20-400.01(A)
21 and the 1989 Consent Order.

22 8. By making adjustments to full manual premiums
23 developed for risks without adequately documenting facts
24 supporting the adjustments in policy files, Respondents violated
25 A.R.S. § 20-400.01(B) and (D). By issuing policies rated without
26 adequate documentation, Respondents violated A.R.S. §
27 20-400.01(A) and the 1989 Consent Order.
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1 9. By using unfiled rates, Respondents violated A.R.S.
2 § 20-385(A) and the 1989 Consent Order.

3 10. By calculating the premiums of certain insureds
4 differently than those of other insureds having substantially
5 like insuring, risk and exposure factors, or expense elements,
6 Respondents unfairly discriminated between insureds in violation
7 of A.R.S. §§ 20-383(A) and 20-448(C), and the 1989 Consent
8 Order.

9 11. By failing to send to the insured notices of premium
10 increase or substantial reduction in coverage of commercial
11 policies at least 60 days before the expiration date of the
12 policy Respondents violated A.R.S. § 20-1677(A).

13 12. By charging certain policyholders reduced premiums
14 inconsistent with Respondents' rate filings, Respondents gave
15 rebates to certain policyholders as an inducement to insurance
16 in violation of A.R.S. § 20-451.

17 13. By nonrenewing CP policies without delivering notices
18 of non-renewal and sending the notices by certified mail to the
19 insureds at least 60 days before the termination date of the
20 policy, Respondents violated A.R.S. § 20-1676(B) .

21 14. By failing to include worksheets in the files of
22 policies to verify the rates and premiums charged, Respondents
23 violated A.R.S. § 20-400.01(D) and the 1989 Consent Order.

24 15. By issuing a policy to an Arizona insured in a company
25 not authorized to transact business in the State of Arizona,
26 Respondents violated A.R.S. § 20-401.01(A).

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28

1 16. By failing to deliver a notice of commercial policy
2 cancellation to an insured at least 60 days before cancellation
3 of the policy, Respondents violated A.R.S. § 20-1674(A).

4 17. By failing to inform PA policyholders of their right
5 to complain to the Director and of their possible eligibility
6 for the assigned risk plan, Respondents violated A.R.S. §
7 20-1632(A).

8 18. By cancelling PA policies in effect over 60 days for
9 reasons other than those listed in A.R.S. § 20-1631(C),
10 Respondents violated A.R.S. § 20-1631(C).

11 19. By cancelling Home policies for reasons other than
12 those listed in A.R.S. § 20-1652(A), Respondents violated A.R.S.
13 § 20-1652(A).

14 20. By failing to pay the full amount of sales taxes and
15 license fees required for the purchase of comparable automobiles
16 to first party claimants in their settlement of first
17 party automobile total loss claims, Respondents violated A.A.C.
18 Rule 20-6-801(H)(1)(b) and A.R.S. § 20-461(A)(6).

19 21. By failing to document deviations from the methodology
20 of A.A.C. R20-6-801(H)(1)(a) and (b) in the calculation of ACV
21 of automobiles involved in first party total loss claims, to
22 give particulars of the automobiles' conditions and to make
23 deductions from the ACV which were measurable, discernible,
24 itemized and specified as to the dollar amount, including
25 deductions for salvage, Respondents violated A.A.C.
26 R20-6-801(H)(1)(c) and A.R.S. § 20-461(A).

27 22. By failing to obtain the either the cost of a
28 comparable automobile in the local market area or to obtain two

1 dealer quotes in the local market area, Respondents violated
2 A.A.C. R4-14-801(H)(1)(i) and (ii) (Now R20-6-801) and A.R.S. §
3 20-461(A)(6).

4 23. By failing to pay all amounts due on first party
5 automobile total loss claims within 30 days of the receipt of an
6 acceptable proof of loss which contained all information
7 necessary for claim adjudication and by failing to pay interest
8 on the amount due from the date the claim was received by the
9 insurer, Respondents violated A.R.S. § 20-462(A).

10 24. By failing to complete the investigation of first
11 party automobile total loss claims within 30 days of
12 notification, Respondents violated A.A.C. R20-6-801(F) and
13 A.R.S. § 20-461(A).

14 25. By failing to compensate one insured under the medical
15 payment portion of his policy, Respondents violated A.R.S. §
16 20-461(A)(6).

17 26. By failing to fully compensate one UM insured for his
18 loss, Respondents violated Bacchus v. Farmers and A.R.S.
19 § 20-461(A)(6).

20 27. Grounds exist for the Director to suspend the
21 Certificates of Authority of the Respondents pursuant to A.R.S.
22 § 20-220.

23 28. Grounds exist for the entry of all other provisions of
24 the following Order.

25
26 ORDER

27 Respondents having admitted the jurisdiction of the
28 Director to enter this Order, having waived the Notice of

1 Hearing, and having consented to the entry of this Order, and
2 there being no just reason for delay:

3 IT IS HEREBY ORDERED THAT:

- 4 1. Respondents shall cease and desist from:
- 5 a. violating Orders of the Director;
- 6 b. failing to file their list of agents with the
7 Department;
- 8 c. failing to issue WC policies in accordance with
9 their filings;
- 10 d. failing to inform the ICA of WC policy
11 cancellations, nonrenewals, reinstatements and issuance;
- 12 e. unfairly discriminating against insureds;
- 13 f. failing to document in accordance with A.R.S. §
14 20-400.01;
- 15 g. using unfiled rates;
- 16 h. failing to send notices of premium increase or
17 reduction of coverage for commercial policies;
- 18 i. charging reduces premium as an inducement for
19 insurance;
- 20 j. failing to send notices of nonrenewal of commercial
21 insurance to insured and failing to send the same by certified
22 mail;
- 23 k. failing to include worksheets in the files;
- 24 l. issuing a policy to an insured in a company not
25 authorized;
- 26 m. failing to deliver notices of of commercial policy
27 cancellation;
- 28 n. failing to produce records;

1 o. failing to inform PA policyholders of the right to
2 complain to the Director and possible eligibility for the
3 assigned risk plan;

4 p. cancelling PA and Home policies in violation of
5 statutes;

6 q. failing to adhere to A.A.C. R20-6-801;

7 r. failing to adhere to the provisions of A.R.S. §
8 20-462(A) as regarding interest paid on claims;

9 s. failing to pay UM and medical claims pursuant to
10 caselaw and statute.

11 2. As the Repondents have been acquired by CNA, as stated
12 above, and since all Respondents' personnel have either been
13 terminated or retrained by CNA, action plans and certain filings
14 shall not be required from Respondents as part of this Order.
15 In the event that a subsequent examination of CNA shall find the
16 types of violations referenced in this Order, CNA shall be
17 required to file action plans at that time.

18 3. Respondents have paid to the claimants and insureds
19 listed on Page 139 of the Report, Exhibit 16 of the Report,
20 Exhibit 26 of the Report and Exhibit 54 of the Report all monies
21 due on account of premium overcharges or claim underpayments.
22 Respondents have also paid interest on these amounts at the rate
23 of ten percent (10%) per annum from the date of the overcharge
24 or the date of the claim submission until the date of payment by
25 the Respondents. All refunds or payments were accompanied by a
26 letter acceptable to the Director. Documentation of these
27 payments has been provided to the Department.

28

1 4. Respondents have paid to the insureds listed in
2 Exhibit 28, Exhibit 37, Exhibit 40 and Exhibit 45 of the Report
3 all monies due. Respondents have also paid interest on these
4 amounts at the rate of ten percent (10%) per annum from the date
5 of the overcharge until the date of payment by the Respondents.
6 All refunds or payments were accompanied by a letter acceptable
7 to the Director. Documentation of these payments has been
8 provided to the Department for Exhibit 28, Exhibit 37, Exhibit
9 40 and Exhibit 45.


10 5. Respondents have paid to the claimants of claims
11 #0181S8168 and #0185U5916 the claim amounts due on account of
12 claim underpayments. Respondents have paid interest on these
13 amounts as required by A.R.S. § 20-462(A) in the amount of ten
14 percent (10%) per annum from the date of the claim submission
15 until the date of payment by the Respondents. All payments were
16 accompanied by a letter acceptable to the Director.
17 Documentation of these payments has been provided to the
18 Department.

19 6. The Department shall be permitted, through authorized
20 representatives, to verify Respondents have fully complied with
21 all requirements of this Order. The Director may separately
22 order Respondents to comply with this Consent Order.

23 7. Respondents shall pay a civil penalty of Seventy-Five
24 Thousand Dollars (\$75,000.00) to the Director for remission to
25 the State Treasurer for deposit in the State General Fund in
26 accordance with A.R.S. §20-220(B). This payment shall be
27 provided to the Market Conduct Examination Division of the
28 Department on or before August 27, 1996.

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8. The August 31, 1993 Report of Examination and any objections to the Report by Respondents, shall be filed with the Department upon acceptance by the Director of this Consent Order. DATED at Phoenix, Arizona this 13th day of September, 1996.



John C. King
Director of Insurance

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2 CONSENT TO ORDER

3 1. Respondents, Continental Insurance Company, Boston Old
4 Colony Insurance Company, Commercial Insurance Company of
5 Newark, New Jersey, Fidelity and Casualty Company of New York,
6 Firemen's Insurance Company of Newark, New Jersey, Glens Falls
7 Insurance Company, Kansas City Fire & Marine Insurance Company,
8 Mayflower Insurance Company, Ltd. and Niagara Fire Insurance
9 Company have reviewed the attached Consent Order.

10 2. Respondents are aware of their right to a hearing at
11 which hearing Respondent may be represented by counsel, present
12 evidence and cross-examine witnesses. Respondents irrevocably
13 waives their rights both to demand a public hearing and to seek
14 judicial review of this Consent Order.

15 3. Respondents admit the jurisdiction of the Director of
16 Insurance, State of Arizona, and consents to the entry of this
17 Consent Order.

18 4. Respondents state that no promise of any kind or
19 nature has been made to them to induce them to enter into
20 this Consent Order and that they have entered into this Consent
21 Order voluntarily.

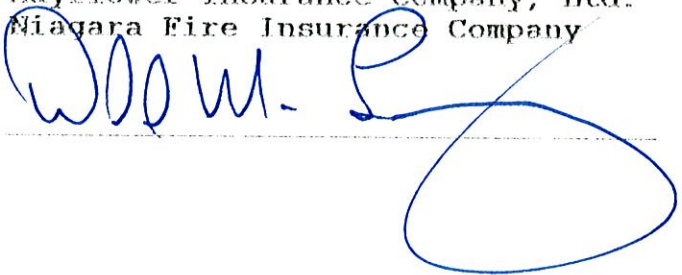
22 5. Respondents acknowledge that the acceptance of this
23 Order by the Director of Insurance, State of Arizona, is
24 solely to settle this matter against them and
25 does not preclude any other agency or officer of this state or
26 subdivision from instituting other civil or criminal
27 proceedings as may be appropriate now or in the future.

28 6. Donald M. Lowry ^{Senior Vice President,} represents that as
~~Secretary and General Counsel~~ he is an officer of Respondents and that, as
such, he is authorized by it to enter into this Consent Order on
their behalf.

Continental Insurance Company
Boston Old Colony Insurance Company
Commercial Insurance Company
Fidelity & Casualty Insurance Company
Firemen's Insurance Company
Glens Falls Insurance Company
Kansas City Fire & Marine
Insurance Company
Mayflower Insurance Company, Ltd.
Niagara Fire Insurance Company

August 26, 1996
(Date)

By



1
2 COPY of the foregoing mailed/delivered
3 this 16th day of September, 1996, to:

4 Charles R. Cohen
5 Deputy Director
6 Gregory Y. Harris
7 Executive Assistant Director
8 Erin Klüg
9 Chief Market Conduct Examiner
10 Market Conduct Examinations Division
11 Paul J. Hogan
12 Supervisor
13 Market Conduct Examinations Division
14 Deloris E. Williamson
15 Assistant Director
16 Rates & Regulations Division
17 Gary Torticill
18 Assistant Director and Chief Financial Examiner
19 Corporate & Financial Affairs Division
20 Cathy O'Neil
21 Assistant Director
22 Consumer Services and Investigations

23 DEPARTMENT OF INSURANCE
24 2910 North 44th Street, Suite 210
25 Phoenix, AZ 85018

26 Jeffrey S. Yosowitz
27 Director and Counsel
28 Law Department - 42 South
CNA Insurance Companies
CNA Plaza
Chicago, Illinois 60685

29 *Carrey W. Buxton*
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